

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMY CONNER

Claimant

VS.

HUTCHINSON GOOD SAMARITAN

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

Docket No. 193,702

ORDER

Respondent and its insurance carrier appealed from a Preliminary Order rendered by Administrative Law Judge George R. Robertson on May 15, 1995.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction by ordering benefits when the evidence does not establish that claimant's injury arose out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The issue raised by respondent is one subject to review on appeal of a preliminary order. K.S.A. 44-534a.

(2) The Appeals Board finds that the evidence does establish claimant's injury arose out of and in the course of her employment or, at a minimum, was aggravated by the duties of her employment and accordingly the Order should be affirmed.

The Order appealed in this case is the second preliminary order entered by the Administrative Law Judge. On December 13, 1994 Administrative Law Judge George R. Robertson first ordered respondent to provide medical treatment. The Order was entered after reviewing conflicting medical opinions. It appears from the record that the Administrative Law Judge relied in significant part on the claimant's own testimony and the opinion of Dr. C. Reiff Brown. Dr. Brown attributed the condition to claimant's work duties as a certified nurse's aide. As a result of the December 13, 1994 Preliminary Order, the respondent referred claimant to Dr. Lucas. Dr. Lucas, thereafter, expressed his opinion that claimant's injuries were not work related. On the basis of Dr. Lucas' report,

respondent asked for a second preliminary hearing. At the second preliminary hearing, Dr. Lucas' report was offered as the only additional evidence and the Administrative Law Judge reaffirmed his initial Order for benefits. This Board recognizes respondent's right to a second preliminary hearing on the basis of evidence not available at the time of the first hearing. However, in this case the additional opinion of Dr. Lucas does not persuade the Appeals Board that the initial decision should be reversed. The initial decision was supported by claimant's testimony regarding the work and onset of symptoms in the course of that work. It was further supported by the detailed opinion of Dr. C. Reiff Brown. The Appeals Board, therefore, finds that the Order of the Administrative Law Judge dated May 15, 1995, should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson dated May 15, 1995 should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James Oswalt, Hutchinson, Kansas
Scott J. Mann, Hutchinson, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director